

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

RMAIL LIMITED,

Plaintiffs,

v.

AMAZON.COM, INC., and PAYPAL,

Defendants.

Civil Action No. 10-CV-258-JRG
(Lead Case)

Hon. Rodney Gilstrap

RMAIL LIMITED, *et al.*,

Plaintiffs,

v.

DOCUSIGN, INC.,

Defendant.

Civil Action No. 2:11-CV-299-JRG

RPOST HOLDINGS, INC., *et al.*,

Plaintiffs,

v.

ADOBE SYSTEMS INCORPORATED, *et al.*,

Defendants.

Civil Action No. 2:11-CV-325-JRG

**THIRD JOINT NOTICE REGARDING STATUS OF CALIFORNIA
CO-PENDING LITIGATIONS**

The parties jointly submit this notice regarding the current status of the California co-pending litigations previously reported to the Court in the parties' October 15, 2013, Joint Notice

Regarding Status of California Co-Pending Litigations [Dkt. 552] and December 16, 2013, Second Joint Notice Regarding Status of California Co-Pending Litigations [Dkt. 559]:

A. Superior Court of California Cases

1. ***Kenneth Barton v. RPost International et al. (YC061581) (“the Barton 581 case”).***

As previously reported, the appeal has commenced. Defendants’ opening brief is due February 21, 2014. Plaintiff’s opening brief is due 45 days later, or by April 7, 2014.

Defendants’ final brief is due 35 days later, or by May 12, 2014. Plaintiff’s final brief is due 20 days later, or by June 2, 2014.

2. ***Kenneth Barton v. RPost International, RMail Limited and RPost Communications (YC065259) (“the Barton 259 case”).***

As previously reported, in the Barton 259 case, the Superior Court continued the previously scheduled October 28, 2013, trial setting and status conference in the Barton 259 case to January 6, 2014.

On January 6, 2014, the Superior Court held a trial setting and status conference in this case and set a Final Status Conference for October 28, 2014 and a jury trial to begin on November 3, 2014. *See* Ex. A (Case Summary for the Barton 259 case).

B. United States Bankruptcy Court, Central District of California Proceedings

1. ***In re Zafar David Khan, No. 2:13-bk-19713-VZ (Bankr. C.D. Cal., Zurzolo, J.); In re Terrance Alexander Tomkow, No. 2:13-bk-19712-WB (Bankr. C.D. Cal., Brand, J.)***

On January 9, 2014, Khan and Tomkow filed a notice of appeal of the court’s ruling that Khan’s and Tomkow’s personal bankruptcies be converted from Chapter 13 to Chapter 7.

2. *Barton v. Khan, No. 2:13-ap-1752-VZ (Bankr. C.D. Cal., Zurzolo, J.); Barton v. Tomkow, No. 2:13-ap-1751-WB (Bankr. C.D. Cal., Brand, J.).*

As previously reported, Khan and Tomkow filed motions objecting to Barton's claim #5 (Barton's unsecured claim for damages arising from the Barton 581 case) under Section 510(b) of the U.S. Bankruptcy Code. On January 13, 2014, the court denied the motions. A notice of appeal of the court's ruling is due by January 27, 2014.

This case is presently stayed. The next status hearing is set for April 8, 2014.

3. *Burke et al. v. Khan, No. 2:13-ap-1773-VZ (Bankr. C.D. Cal., Zurzolo, J.); Burke et al. v. Tomkow, No. 2:13-ap-1774-WB (Bankr. C.D. Cal., Brand, J.)*

As previously reported, the bankruptcy court dismissed Burke and 126736 Canada, Inc.'s First Amended Complaint. On December 16, 2013, Burke and 126736 Canada, Inc. filed a Second Amended Complaint. On January 6, 2014, Defendants filed (i) a Motion to Dismiss the Second Amended Complaint (Ex. B (from 2:13-cv-1773-VZ)) and (ii) Motion to require Plaintiffs to post a bond to pursue the Second Amended Complaint on grounds that Plaintiffs are not likely to prevail (Ex. C (from 2:13-cv-1773-VZ)). No hearing date has been set for these motions. However, as previously reported, there is a status conference scheduled for February 25, 2014, at 2:00 p.m.

C. Recommendations

Plaintiffs' Recommendation: Given that the previous stay entered in this case expired December 30, 2013, Plaintiffs recommend that the Court set a date for the completion of the Final Pretrial Conference and for jury selection. Plaintiffs maintain that there are no issues concerning ownership or control of the patents-in-suit that need to be resolved through the pending California and U.S. Bankruptcy Court actions and that this case should not be stayed pending resolution of the Barton 259 case or other cases.

Defendants' Recommendation: The issue of patent ownership (the basis of the original stay in this matter) is still unresolved. Given that trial in the Barton 259 Case (relating to ownership of RPost patents) is scheduled for November 3, 2014, Defendants recommend that the stay be continued until resolution of at least the Barton 259 Case, and perhaps other cases pertaining to ownership or control of the relevant patents.

DATED: January 21, 2014.

Attorneys for Plaintiffs

/s/ Lewis E. Hudnell, III
lewis@colvinhudnell.com
COLVIN HUDNELL^{LLP}
375 Park Avenue, Suite 2607
New York, NY 10152
T: 347.855.4772
F: 347.772.3034

Winston O. Huff (SBN 24068745)
whuff@huffip.com
Deborah Jagai (SBN 24048571)
kjagai@huffip.com
W.O. HUFF & ASSOCIATES^{PLLC}
302 Market Street, Suite 450
Dallas, TX 75202
T: 903.236.9800
F: 903.236.8787

Kenneth C. Goolsby (SBN 24003668)
BOON, SHAVER, ECHOLS,
COLEMAN & GOOLSBY, P.L.L.C.
1800 N.W. Loop 281, Suite 303
Longview, TX 75604
Telephone: (903) 759-2200
Facsimile: (903) 759-3306
Email: casey.goolsby@boonlaw.com

*Attorneys for Adobe Systems Incorporated
and Echosign, Inc.*

/s/ Andrew P. Valentine (pro hac vice)
andrew.valentine@dlapiper.com
Robert Buergi (pro hac vice)
robert.buergi@dlapiper.com
Erik R. Fuehrer (pro hac vice)
erik.fuehrer@dlapiper.com
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, California 94303
T: 650.833.2000
F: 650.833.2001

Claudia Wilson Frost (SBN 21671300)
claudia.frost@dlapiper.com
DLA PIPER LLP (US)
1000 Louisiana, Suite 2800
Houston, Texas 77002-5005
T: 713.425.8400
F: 713.425.8401

Attorneys for Defendant DocuSign, Inc.

/s/ David A. Lowe (pro hac vice)

Lowe@LoweGrahamJones.com

LOWE GRAHAM JONES ^{PLLC}

701 Fifth Avenue, Suite 4800

Seattle, Washington 98104

T: 206.381.3300

F: 206.381.3301

Melissa R. Smith (SBN Bar No. 24001351)

melissa@gillamsmithlaw.com

GILLAM & SMITH, LLP

300 South Washington Avenue

Marshall, TX 75670

T: (903) 934-8450

F: (903) 934-9257

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all who have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Lewis E. Hudnell, III